App. F. IX-4

1937. (Law)

File No. 69-37

Serial Nos. 1-5

Previous References

Law 56-35 (1-16)

Letter References.

Law 126-37-1-2

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. June

Part B for November 1937

SUBJECT.

Circular letter No P2266-2321/3-11-37 in matter of obtaining previous permission of Govt for withdrawing from prosecution under section 494 CrPC

WD 0418—GPB—22,500—29-8-36

M Iyengar
18/11/37

8413
p 836

no. 2079/36-37.

Office of the Public Prosecutor,
Bangalore Division, Bangalore.
Dated 14th May, 1937.

Law 69-37-1

From.
G. S. Doraswami Iyer, Esqr, B.A. B.L.,
Public Prosecutor, Bangalore Division,
Bangalore.

GENERAL SECRETARIAT
15 MAY 1937

To

The General Secretary
to the Government of Mysore,
Bangalore.

In the Court of the City Magistrate, Bangalore.

C. C. Nos. 264, 265, 525, 529

Apex Bank cases.

Sir,

I have the honour to state that the above cases were withdrawn by me as the accused have been convicted in B.S.C. 5 of 1935-36 and the conviction has been confirmed by the High Court. No useful purpose would be served by proceeding with these case and since it will cost considerable money to Government. these are cases arising out of the same transactions for which the accused have been convicted.

I have the honour to be,
Sir,
Your most obedient servant,

Public Prosecutor,
Bangalore Dvn
Bangalore.

1) Subd. Reference Collections have been put up with the file relating to the Gen: Secy's minutes regarding the conduct of the Auditors, and has been submitted to the Gen: Secy. Its return will be awaited

BKR 18.5

2) The P. Pr., B'lore was asked to keep pending all the cases against the accused (Vide flag K.). Besides, he himself has stated

Re: withdrawal of the remaining Apex Bank cases 6473 -2

General and Revenue Secretariat | File No. Law 6 / of 193 /. | [App. F. III—2

Serial No.

in his letter dated 4th Feb: 1936 (Flag 5) that "Unless otherwise instructed he intends to prosecute and proceed with the other cases." There does not appear to be any order directing the withdrawal of the cases.

A draft enquiring is put up for approval or orders.

28/5

3) On a previous reference made by the P.P he was informed that all the accused cases against the accused may be kept on, though prosecution might for the present proceed with two or three strong cases as suggested by the District Magistrate

Flag M.

4) Two cases were proceeded with. In one, the 1st accused (Venkatasubbaiah) was convicted, and in the other case both the accused (Venkatasubbaiah and Rajagopalan) were convicted.

5) The P.P now writes that he has withdrawn the remaining four cases. Govt do not seem to have been consulted in the matter or their approval obtained. It is not known if he consulted the District Magistrate before withdrawing the cases. It looks as though he has acted on his own responsibility.

NOTE—Contn. Sheet.

WD 0417--GPE—30,000-8-9-36

(7)

Re: withdrawal of the remaining cases Apex Bank cases. (2473/51)

File No. Law 869 of 1937

General and Revenue Secretariat

Serial No.

GENERAL SECRETARIAT 29 MAY 1937

If approved, he will be asked to intimate the circumstances in which he withdrew the remaining cases without instns from Govt.

Gen Secy 1) 2nd 29.5.37 17/6/37

2757 29/5

First Member) 7) 2nd 19/6

3464 (9.6.37)

2nd 19/6

8) draft DXR 22.6.37

TYPING SECTION 22 JUN. 1937 GENL & REV. SEC.

9) Subd with a dft for approval

(10) done DXR 22.6

22/6

Issued no P. 7066, dt. 22.6.37

Sec A 23-6-37

From

the P. Pr., B'lore

Letter No. DOS 3/37-38, dt. 2-7-37

Explains the circumstances under which the remaining 7 Cases were withdrawn

11) The Public Prosecutor explains the circumstances under which the remaining Cases were withdrawn

Submitted

577

Apex Bank Cases (Articles ...)

General and Revenue Secretariat | Law File No. 56 of 1937. | [App. F. III—2

Serial No.

Reference para 5.

12) Kind attention is also invited to the previous communications from and to the P.P.V. (Papers M, J and S in the file placed below)

BKR 5.7.37

13) Did the Govt authorise the Govt to withdraw the cases? XXX Govt Secy 6/7/37

Draft today BKR 10.7

14) Subd. : A draft for approval.

SB 10/7

15) Done today BKR 10.7

Govt Secy 10-7-37

Issued No. P.183, dt 10-7-37

From

The Dist Magt

B'lore

Letter No. T1.P.R. 810/36-37, dt 19-7-37

States that his predecessor (Mr M.S. Ramachandra Rao) has authorised the withdrawal of these Cases.

16 Reference para 13 supra.

P.V.D. is submitted for perusal and ...

SB 22/7

17 In view of the fact that the Govt withdrawal of the cases was authorised by the District Magistrate on 10-5-37, these

NOTE—Contn. Sheet.

GEC 5 JULY 1937 3893

5— 1) Apex Bank case (withdrawal) 488

Law File No. 69 of 1937

General and Revenue Secretariat

Serial No.

matter may perhaps be filed :—

BKR
22.7.37

(Gen. Secy.)

1) Should we the Dn have straight wishes of Govt? Dno

(sd/-)

2) Section 494 of the Criminal Procedure Code provides that any public prosecutor may, with the Consent of the Court, withdraw from the prosecution or is further laid down in Paragraph 294 (2) of the Police Manual that the District Magistrate should be consulted by the Public Prosecutor or the Superintendent before any important case is so withdrawn. This latter rule implicitly suggests that the District Magistrate is competent to permit withdrawals from prosecution, though in practice, he generally consults the Govt before sanctioning withdrawals. There seems to be, however, no definite provision on the point.

GENERAL SECRETARY.
22 JULY 1937
558

BKR
31.7.37

(Gen. Secy.)

Please verify. If there were no instructions why the Dn's generally seek wishes? Dno

415

GENERAL SE
31 JULY 19
803

Apex Bank Cases. 6

General and Revenue Secretariat | Law File No. 69 of 1937 | [App. F. III–2

Serial No.

GENERAL SECRETARY
31 AUG. 1937
1339

If prosecutions have been launched at the instance of, or after formally informing, the Government, I think it would not perhaps be proper for the District Magistrates to sanction withdrawals of such cases without consulting the Government. In cases, however, where the prosecutions are launched in the usual course without the knowledge of the Government, the District Magistrates can, in their own discretion, permit withdrawals.

BKR
30.8.37

Gen'l Secy

Refce paragraph 7.
The D.M. seems to have directed withdrawal of the cases. The Public Prosr acted on the instructions of the D.M. (Mr M S Ramachandra

Considering the importance of the cases the D.M. should have sought instructions of Govt before directing withdrawal. The point about getting appl. of Govt. in such cric is not uniform. Instructions may perhaps be issued that in cases in which prosecn has been ordered by Govt or with their concn (as also in other important cases) instructions of Govt should be obtained before directing withdrawal.

2nd 14/9
BKR
14

First Member

V S Iyer
9/9/37

By Sec. 2nd 29/9.

SEP 15 1937
OTE—Contd. Sheet.

VDG417—GPB—30,000—8-9-36

Re: withdrawal of the remaining Apex Bank cases.

Law File No. 69 of 1937

General and Revenue Secretariat

Serial No.

2. 4 A draft circular is subd for Consideration.

15/10 ~~BB~~ ~~15/10~~ ~~please~~ put up a clean draft as revised.

BSKR 21.10.37

5 A clean draft (Flag K) is put up for approval or otherwise

21/10 ~~BB~~

BSKR 22.10.37

GENERAL SECRETARIAT 23 OCT. 1937 2325

Gen. Secy) 25/10/37

BSKR 26.10.37

Hon'ble Member) 27/10 27/10/37

2321 26/10

Dewan) 29-10-37

30/10/37

BSKR 1/11/37

Circular No. P. 2266 - 2321, dated 3-11-37

TYPING SECTION 1 NOV. 1937 GENL. & REV. SECTT.

B 17-11-37

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 22nd June 1937.

No. P 7066/Law 2310

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Public Prosecutor.
Bangalore.

Sir, C. C. Nos. 264, 265, 525, 529- Apex Bank cases.

With reference to your letter No. 2039/36-37 dated 14th May 1937 stating that the above cases were withdrawn by you, I am directed to request you to intimate the circumstances in which those cases were withdrawn by you without instructions from Government.

I have the honour to be,
Sir,
Your most obedient servant,

For General Secretary to Government.

TSS.

Appendix F G—1]

4

SUBJECT .....

.....

.....

Section Laws

File No. 56-35

Serial No.

Diary No. of letter replied to.....

No. P 7066

To

The P. Pr., B'lore

C C Nos 264, 265, 525, 529

— Apex Bank Cases

Sir,

General and Revenue Secretariat

( )

the *193* .

With reference to your letter no 2039/36-37, dated 14th May '37 stating that the above cases were withdrawn by you, I am directed to request you to intimate the circumstances in which those ~~Assessments~~ above cases were withdrawn by you without instructions from Govt.

Date of issue 23/6/37

Signed by Asst. B.K.R.

List of enclosures.....

Copied by aw 21/6

I have etc,

BKR

Examined by.....

for Genl Secy.

WD 0521—GPB—30,000—12-3-37

Appendix F G—1]

Immediate 10

SUBJECT .....

.....

.....

Section Law

File No. ~~P 183~~ 69-37

Serial No. — — — 2

Diary No. of letter replied to.....

No. P 183

To

The Dist. Magistrate

Bangalore

General and Revenue Secretariat

( )

the *193* .

Sir,

Date of issue 10-7-37

It is reported to Govt that C.C. Nos 264, 265, (Mela Pet Cases) 525, 529 on the file of the City Magistrate, Bangalore have been withdrawn. I am to request you to intimate very early whether your ~~permission was~~ authority in pursuance to withdraw in our cases, obtained in the matter.

Signed by BKR.

I have etc.,

BKR

for Govt Secy.

List of enclosures.....

Copied by .....

Examined by.....

WD 0521—GPB—30,000—12-3-37

S 1/1937
P
11

Office of the Public Prosecutor,
Bangalore Division,
Bangalore 2nd July 1937.

No. ~~Doc~~ 3/37-38

Enc.

60-24-

From

G. S. DORASWAMI AIYAR, Esq., B.A., LL.B.,
Public Prosecutor,
Bangalore Division,
Bangalore.

GENERAL SECRETARY.
3- JULY 1937

To

M. VENKATESA IYENGAR, Esq., M.A.,
~~Chief~~ Secretary to the Government
of Mysore, B A N G A L O R E.

Sir,

Re: APEX BANK CASES.

I have the honour to acknowledge receipt of your letter No.P.7066/Law dated 22nd/23rd July 1937 and to - state that the said cases were withdrawn with the consent of the Court as the offences to which they related were part of the same fraudulent transaction in respect of which all the accused concerned were convicted in Bangalore - Sessions Case No.5 of 1936-37. As the accused were not only convicted and sentenced by the Court of Sessions for long terms of imprisonment but as the sentences were enhanced by the High Court and as the accused have been - sufficiently punished the cases were withdrawn under the circumstances mentioned in the letter to the District Magistrate No 2040/- 36-37. dated 14.5.37. ~~a copy of which is enclosed herewith~~.

The cases were withdrawn in consultation with the then District Magistrate and the City Superintendent of police and also with the consent of the trial court as provided by the statute.

We thought that no useful purpose would have been served by proceeding with cases against persons who had already been convicted for long periods of imprisonment. The learned Government Advocate had also withdrawn an appeal against acquittal preferred by Government in another case against one of the accused which had been admitted by the High Court on 2-4-1937 or thereabouts in connection with another case unconnected with the Bangalore Sessions Case No.5 of 36-37 and in which one of the accused had been acquitted by the trial court and which accused has only been convicted for 3 years and a fine of Rs.2,000/-. These circumstances also weighed with us in withdrawing the said Charge Sheets.

The proceeding with the cases referred to in the letter under reference would have involved considerable expense to Government and taken up the time of a Magistrate for a very long time and that of a court of Sessions for some time. Some of the witnesses were residing at far off places and their examination would have involved considerable amount of expense.

In the connected case in which the very same accused were convicted a police officer, an officer of the Bank of and a Court official had to go to Bombay and Lahore to obtain certain evidence.

It was in consideration of these facts and in accordance with the usual practice that has always been prevelant in such matters the cases were withdrawn in accordance with Law.

In numerous cases in which in respect of the same

same series of transactions where several charge sheets are put up just to avoid any possible Mis Joinder and as a matter of abundant caution when once the accused have been convicted, then the practice has all along been to withdraw the other charge sheets with the consent of the judge who exercises his discretion as a judge and in consultation with the District Magistrates and Superintendent of Police and not to trouble Government.

In this particular case the cases referred to in ~~th~~ the letter under reference were against the same persons who were convicted by the Sessions Judge and ~~fairl~~y severely too.

The charge sheets in question were placed only with a view to proceed with them in the event of the main charge not having ended in a conviction. As this contingency did not arise the cases were withdrawn and the matter reported to the District Magistrate and other officers concerned and in the exercise of statutory powers.

In the circumstances, I hope that Government will approve of the action especially in view of the fact that neither the statute nor the rules for the conduct of legal affairs of Government provide or even mention obtaining the sanction of Government before withdraw a case.

I have the honour to be,
Sir,
Your most obedient Servant,

Duraiswamy Jr.

SKS. PUBLIC PROSECUTOR.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 183 Law 69-37-2

Dated, Bangalore, 10th July 1937.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,
Bangalore.

Sir,

It is reported to Government that C.C.Nos. 264, 265, 525, 529 (Alex Bank Cases) on the file of the City Magistrate, Bangalore, have been withdrawn. I am to request you to intimate very early whether you authorised the Public Prosecutor to withdraw the said cases.

I have the honour to be,
Sir,
Your most obedient servant,

For General Secretary to Government

Immediate.

In all future communications please quote—
No. Jl.P.R.810/36-37
Enc.

OFFICE OF THE DISTRICT MAGISTRATE,
BANGALORE DISTRICT.

Dated, Bangalore, the 19th July, 1937

GENERAL SECRETARY. 20 21 JULY 1937

From

H. V. Ramasvami, Esq., M.A., B.L.,
District Magistrate,
Bangalore District.

To

M. Venkatesa Iyengar, Esq., M.A.,
Secretary,
to the Government of Mysore.
General Department,
Bangalore.

Sir,

Subject :—

With reference to your letter No.P.183 dated 10-7-37, regarding the withdrawal of the cases No.C.C.264,265, 525 and 529/35-36 (Apex Bank Cases) on the file of the City Magistrate, Bangalore, I have the honour to state that my predecessor(Mr.M.S. Ramchendra Rao), has authorised the withdrawal of these cases on 10-5-37.

I have the honour to be,
Sir,
Your most obedient servant,

H R Ramaswamy

DISTRICT MAGISTRATE,
BANGALORE DISTRICT.

SVR/

GENERAL SECRETARIAT

23 JULY 1937

No. 93
Enc.

549/37

OFFICE OF THE PUBLIC PROSECUTOR,
BANGALORE DIVISION.

Bangalore, 21. 7. 1937.

FROM

The PUBLIC PROSECUTOR,
BANGALORE DIVISION, BANGALORE.

TO

M. Venkatesa Iyengar Esq
General Secretary
to Government of
Mysore.

SIR,

After Bank cases

In connection with the withdrawal of the aforesaid cases and in continuation of my D.O. 3 of 3-7-38 I have the honour to state that the permission of the District magistrate has been obtained in writing on a reference in connection with these cases made by the Superintendent of Police

549

Bangalore city.

I have the honour
to remain
Sir
Your most obedient
servant

S Narasimha Iyengar

Submitted.

The connected file has been submitted to the Genl: Secy on 22-7-37. Its return will be awaited

30/7

This may be put up in the main file

BKR
30-7

18

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 3rd November 1937.

No.P.2266-2321/Law.69-37-5.

Confidential Circular.

Government observe that practice in regard to getting their approval for withdrawing from prosecution under Section 494 of the Criminal Procedure Code is not uniform and are pleased to direct that in cases in which prosecution has been ordered by Government or with their cognisance (as also in other important cases) their instructions should be obtained before ordering such withdrawal.

M. VENKATESA IYENGAR,
General Secretary to Government.

To—The Heads of Departments.
The Public Prosecutors.
The District Magistrates of Districts.

P 2266-232/Law ~~Office~~ 64-37-5

3.11.37.

Confidential Circular.

Government observe that practice in regard to getting their approval for withdrawing from prosecution under section 494 of the Criminal Procedure Code is not uniform and are pleased to direct that in cases in which prosecution has been ordered by Government or with their cognisance (as also in other important cases) their instructions should be obtained before ordering such withdrawal.

Genl. Secy. to Government

26.10.37

To

The Heads of Departments.
" Public Prosecutors.
" District Magistrates of Districts.